

# **Exhibit 103**

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What's at stake in North Charleston rail debate [Brotherhood of Locomotive Engineers and Trainmen]



## What's at stake in North Charleston rail debate

(The following story by Daniel Brock appeared on the Charleston Regional Business Journal website on July 19, 2010.)

CHARLESTON, S.C. — On a warm evening in early July, North Charleston Mayor Keith Summey grabbed a microphone and laid out a plan to save his city.

Hundreds had come to Park Circle for a hastily organized public forum called by Summey, during which he unveiled an expansive new plan for commercial rail. It was a vision, he said, that would protect years' worth of redevelopment on the former Navy base from state lawmakers who didn't prioritize the city's residents.

"We have an obligation to the children to protect the way of life," Summey said.

The forum's open nature contrasted with the mayor's strategy in crafting the plan, contained in a memorandum of understanding linking North Charleston, local developer Shipyard Creek Associates and CSX Transportation.

The deal, which had been in the works for months and started coming together in earnest in late June, was hammered out in backroom meetings and kept out of the public eye. The mayor said he chose to play it that way so that opponents, two of whom he identified as the S.C. Department of Commerce and railroad operator Norfolk Southern, couldn't organize protest before the plan was made public.

If all goes well, the pact could pave the way for near-dock rail access to the S.C. State Ports Authority terminal under construction at the former Navy base, while achieving Summey's ultimate goal: protecting residential and commercial projects in the area by nixing rail access from the property's north end.

### The plan's basics

Summey thought he had squared away the issue of northern rail access with a memorandum of understanding inked in 2002 that said the SPA would "use rail access exclusively from the south end of the property."

But other officials contend that agreement doesn't apply to them because they weren't involved in its drafting. Some have even backed plans for a sprawling intermodal facility on the base's north end, accessed by a rail line that slices through the heart of city redevelopment efforts.

Summey has attempted to outflank opponents with his latest move.

The basic tenets of the agreement are:

Abandonment of rail by CSX along Spruill Avenue.

Redevelopment of the Stromboli Avenue corridor, which runs between Meeting Street Road and Spruill Avenue in the Charleston Neck area.

Use of an alternative route that would move rail out of Park Circle.

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Transformation of CSX's Cooper Yard and the Shipyard Creek Associates-owned Macalloy site into a state-of-the-art intermodal rail facility.

Installation of a rail loop connecting Meeting Street Road and CSX's S-Line.

Those steps would ensure southern rail access to the new intermodal terminal, if not the SPA's facility itself, which is not permitted for on-dock rail service.

All told, the agreement would remove 3.2 miles of rail from North Charleston, produce a half-mile connector and reopen a half mile of track that's currently closed. The city also would get more than 30 acres — some as part of the Rails-to-Trails Conservancy — that would allow for bike paths, park spaces and retail ventures.

The deal is far from final, as major hurdles such as financing and land acquisition exist. Officials familiar with the plan said federal grants, as well as city tax-increment financing and private investment, would fund the project. The grant money is not guaranteed, though, and without it, the deal would almost certainly collapse.

Officials indicated the price tag will be at least \$100 million — the amount to be publicly funded has yet to be determined — and the first phase would likely be completed in four to six years, in time for the new terminal's 2017 scheduled opening.

City Council convened after the forum and unanimously voted to send the memorandum to a final reading on Aug. 7. The next step would be to seek funding.

After Summey's presentation, residents crowded around large maps detailing proposed changes to the city's rail system, asking questions of CSX, Shipyard Creek and city officials.

"I don't really understand it yet, but it sounds good for Park Circle," said Joe Dodson, who moved to the historic neighborhood five years ago.

#### Truck-served port

Controversy has surrounded the debate over how best to utilize rail at the Navy base terminal almost since the project's inception. SPA officials maintain that the Charleston port will always be primarily served by truck and, at most, about 20% of its cargo will ever leave town by train.

Still, the debate over near-dock access to the maritime facility has been drawn-out and, at times, contentious.

Opponents of Summey's plan, who include Commerce, its for-profit S.C. Public Railways division and Norfolk Southern, say CSX will have a competitive advantage should the Macalloy terminal become a reality, with chief rival Norfolk Southern afforded inferior access to the property.

Since it owns the tracks and rail yard the facility would be built around, CSX could charge Norfolk Southern a hefty switching fee for use of its lines. It's a common practice in the rail industry, but could mean Norfolk Southern having to pay CSX thousands, of dollars for every train pulling into and out of the Macalloy terminal.

But cost isn't Norfolk Southern's only concern, according to company spokesman Robin Chapman.

"It's an operational thing," Chapman said. "With a lot of traffic going in and out, if we're at the mercy of the dispatching of our competitor, guess who's going to get preference when the train comes in."

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CSX officials, who readily admit they would have the upper hand at Macalloy, haven't been moved by calls from lawmakers to grant Norfolk Southern equal footing, saying they've dealt with their own disadvantages through the years.

Fredrik J. Eliasson, CSX's vice president of emerging markets, said the Georgia Ports Authority built Norfolk Southern a near-dock terminal nearly a decade ago in Savannah, and CSX had no similar facility until last year.

"For 10 years, there was a difference in terms of the competitive landscape there," Eliasson said. "Any period, there are competitive advantages and disadvantages; it's just the way it is."

At the Maryland Port Administration's Dundalk Marine Terminal, Norfolk Southern handles all car switching itself and charges a much as \$490 per move.

Summey has suggested that Norfolk Southern could avoid the switching fee here by transporting its cargo by truck to its current intermodal facility on Goer Drive, some four miles up Interstate 26.

"That would be a considerable disadvantage to not have direct rail access when our competitor does," Chapman said.

One yard or two?

State lawmakers, such as Transportation Committee Chairman Larry Grooms, R-Bonneau, argue that a crippled Norfolk Southern would limit cargo destinations for shipping companies, thereby limiting the port's competitiveness.

Officials with S.C. Public Railways and their supporters say that equal dual access to a near-dock terminal is crucial to ensuring price-lowering competition that would make Charleston a viable option for container lines.

The Macalloy plan does include the option of building Norfolk Southern a facility on the former Promenade property, now known as Laurel Island, a former disposal area just north of the Arthur Ravenel Jr. Bridge. But the railroad and the state have both rejected the idea on several grounds — the site's location and bogginess among them.

But building Norfolk Southern a yard isn't the answer, according to Public Railways. The agency is adamant about bringing to the Navy base a single intermodal terminal that would serve both rail lines.

The reasoning, according to agency president Jeff McWhorter, is that two facilities cost twice as much to build.

"If you have the ability to build one facility that you can serve all the Class I railroads, and you can do that for half the cost, does that not make more sense?" McWhorter said.

At a single facility run by a third-party operator, areas would be designated for each rail line — not unlike the current situation at the port's rail-served terminals. There, Public Railways does the switching, said McWhorter, "and that runs smooth as can be," he said.

A single intermodal yard served by two Class I railroads seems to be a rarity. At Savannah, for instance, both lines have an on-dock presence, but at different intermodal sites. Industry experts, in fact, were hard-pressed to think of a single example on the East Coast.

There is one such facility at the Port of Virginia. The Virginia Port Authority inked a 20-year lease this month on an APM Terminals facility in Portsmouth.

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The terminal, which has a capacity of 1 million 20-foot equivalent units, features a six-track rail yard that's accessible by CSX and Norfolk Southern. A third party, short-line railroad Commonwealth Railway Inc., owns the spur that leads into the facility and does switching for both companies.

"It isn't standard, that's for sure," said Robert Morris, the Georgia Ports Authority's director of external affairs.

#### Equal dual access

The cachet that comes from being able to offer both Class I railroads on a level playing field is what Public Railways officials, state lawmakers and port executives all along the East Coast are aiming for.

Getting it, however, isn't so easy.

"I think it's a good goal to strive for, because you can market that to your customers," said Joe Harris, public relations manager at the Port of Virginia. "You can say, 'We have on-dock service by the East's two Class I railroads. Take your pick.'"

The Virginia Port Authority stumbled into the situation after APM completed a half-billion-dollar terminal in 2007 and the economy fell apart. The authority also had long-term contracts locked in for the vast majority of shipping lines that called on the port, which helped draw APM to the bargaining table.

Though there is legitimate equal on-dock rail access at the APM site, it's just one of the Virginia Ports Authority's four terminals, which include Norfolk International Terminals, previously its largest facility.

Given the proximity and shared origins, it's understandable that Norfolk Southern dominates the area, traditionally handling more than 95% of the cargo at Virginia's ports, according to multiple industry experts.

"Norfolk is a situation where the shoe is on the other foot," in contrast to Charleston, said Chapman, the Norfolk Southern spokesman.

Harris spoke to the realities of the rail business, saying his port's relationship with Norfolk Southern and its previous incarnations stretched back for decades.

"We've always favored NS, because that's how it worked. CSX has always been a player, but not the big player. It's just how it evolved," Harris said. "I think (complete) dual access is something that I don't know is achievable."

#### Rival plans

State officials haven't been deterred in seeking parity. Some, including McWhorter, are pushing a plan that would place a single, dual-served intermodal facility on property currently allocated to the Clemson University Restoration Institute.

The idea would be to run Norfolk Southern trains onto the Navy base from the north, while CSX would access the facility via its tracks from the south.

The selling point lawmakers have gotten behind is that the agency would own and operate the facility, performing switching duties and putting trains together for both companies. CSX and Norfolk Southern would then pay equal switching fees (about \$120 per car, according to Public Railways) and other costs for equal access.

Another, less popular, idea would situate the rail yard on The Noisette Co.'s on-base property, possibly

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consigning the highly touted redevelopment project to an ignominious end. McWhorter said he never backed that plan, however, primarily because the site was too far removed from the new terminal.

But McWhorter added that he didn't have an issue with continuing to utilize rail that already runs through what he sees as a stalled development on the Navy base.

"I'm not really sure what the impact would be on the community," he said. "It's vacant land; nothing's really going on with it now."

Once off the base property, Norfolk Southern would use a piece of track that runs parallel to Virginia Avenue and is owned by the North Charleston Terminal Co., a two-thirds/one-third partnership between CSX and Norfolk Southern.

Two issues facing either site, though, as noted in the 2008 State Rail Plan Update commissioned by the state Commerce Department, are land availability and rail access.

Both of those properties are designated for other uses — The Noisette Co. project and the Restoration Institute's \$98 million wind turbine drivetrain testing facility.

Noisette President John Knott has said the plans would require "massive condemnation."

McWhorter seemed to cast doubt on the wind turbine facility's long-term prospects, noting that the Restoration Institute's grant from the Energy Department is for five years. He also said the land needed for the terminal is across the street from the testing facility and questioned whether the Institute had yet to attract a windmill component manufacturer who needed to locate on the property.

Restoration Institute officials countered that their grant is matched by \$53 million in private funding and that the aim is for the drivetrain facility to be self-sufficient in five years' time.

"That's just the beginning," Restoration Institute spokesman Peter Hull said.

McWhorter later said that he did not mean to question project's viability, while noting Public Railways is set to build a \$365,000 rail spur that will service the testing facility.

Sen. Paul Campbell, R-Goose Creek, a member of the State Transportation Committee, was also concerned with the effect a Clemson-based yard would have on the institute's employment potential.

"We have to protect job development on the Navy base," he said. "The drivetrain testing facility has the capability to produce a number of jobs for this area and state."

As for rail on The Noisette Co.'s property, although Public Railways is cleared by the federal Surface Transportation Board to operate on it, ownership of the real estate underneath has been the subject of a two-year legal battle between the Charleston Naval Complex Redevelopment Authority and the developer.

The redevelopment authority was created by the state to divvy up the Navy base land when it closed in 1996. It has previously tried to transfer ownership of the rail line to S.C. Public Railways, but state legislators have so far withheld from signing off on that deal.

A further obstacle for the Noisette site is its lack of commercial zoning, which Summey has stated he would not grant if the state were to obtain the property.

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Of the three plans — Macalloy, Clemson and Noisette — the rail plan update singles out Macalloy as the most feasible site, saying it "holds the most promise."

The primary obstacle remains access. If that was resolved, McWhorter indicated his agency might come on board.

"Look, if there were a way that we could get Norfolk Southern in from the south end and them not having to pay a bunch of money to CSX, we're fine with that, too," he said.

Officials aligned with the Macalloy project quietly question the motives of opponents who they say would benefit financially from other plans. CSX's Eliasson called the focus on dual access a "red herring" that is distracting people from the real issue of how best to increase port volume and revenue, which would bolster the state economy as whole.

Some officials have indicated that money and control are driving Commerce's push for the Clemson or Noisette plan. S.C. Public Railways would operate yards at either facility, taking in money for every train hookup, switch and crane lift.

McWhorter brushed aside the notion that opposition to the Macalloy plan is masking a cash grab by his agency.

"Absolutely not. Our goal is to do what we think is in the best interest of our state's economy," he said. "This is not a money-making venture for Public Railways. None of our money goes to the Department of Commerce. We're not appropriated. We retain our earnings, and we reinvest in our capital. We run our operations."

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[bentley@ble-t.org](mailto:bentley@ble-t.org) (<mailto:bentley@ble-t.org>)

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